

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**WANDA DUTSCHMANN, et al.,**

**Plaintiffs,**

**v.**

**CITY OF WACO, et al.,**

**Defendants.**

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**CASE NO. 6:22-CV-00094-ADA-JCM**

**ORDER GRANTING-IN-PART AND DENYING-IN-PART REQUEST FOR JUDICIAL  
NOTICE IN SECOND EMERGENCY MOTION FOR TEMPORARY RESTRAINING  
ORDER**

Before the Court is Plaintiff Marice Schreck's Request for Judicial Notice in Second Emergency Motion for Temporary Restraining Order (Dkt. No. 8).

**Judicial Notice Taken in Part**

A Court make take judicial notice of "a fact that is not subject to reasonable dispute" because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The Court may take judicial notice own its own, or if a party requests it and the Court is supplied with the necessary information. Fed. R. Evid. 201(c).

Marice Schreck, asks the Court to take judicial notice that "the Department of Health and Human Services establishes that WANDA DUTSCHMANN is being falsely imprisoned by THE DELANEY AT LAKE WACO." Dkt. No. 8. The motion attaches a copy of the "Decision," which the Court readily found published at <https://www.hhs.gov/sites/default/files/static/dab/decisions/alj-decisions/2015/cr3772.pdf>.

To avoid problems arising from the propriety of a motion signed by Marice Schreck alone,

the Court acts *on its own* under Fed. R. Evid. 701(c)(1) to **TAKE JUDICIAL NOTICE** that the Department of Health and Human Services published the attached “Decision.” Judicial Notice is limited to the fact that the Department of Health and Human Services published the attached Decision. Because the Court takes this judicial notice based on an *ex parte* motion, judicial notice is considered automatically revoked upon challenge by another party under Fed. R. Evid. 201(e) until the challenging party can be heard.

The Court does not take judicial notice of any underlying fact recited within that Decision because those facts were disputed and because the Court cannot readily verify the accuracy of sources therein. In other words, the Court does not take judicial notice of whether “WANDA DUTSCHMANN is being falsely imprisoned by THE DELANEY AT LAKE WACO.”


Emergency Motion Denied with Prejudice

The Court issued an Order (Dkt. No. 7) denying the Emergency Motion for Temporary Restraining Order without prejudice, with leave to re-file in accordance with the rules for signatures and attorney representation. This Second Emergency Motion for Temporary Restraining Order (Dkt. No. 8) is denied for the same reasons.

Additionally, this Second Emergency Motion for Temporary Restraining Order (Dkt. No. 8) sets forth no basis to grant a Temporary Restraining Order, nor does it set forth the terms of any proposed temporary restraining order for the Court to grant. It appears to rely on the Decision of the Department of Health and Human Services, which is not an appellate court that binds this Court. Moreover, the facts underlying the Decision of the Department of Health and Human Services have not yet been tried in this Court, and this Court cannot take judicial notice of the facts therein because any disputed material facts are reserved for a jury to decide at trial. Finally, the motion fails explain how it meets the standard for an *ex parte* motion for a temporary restraining

order. The Second Emergency Motion for Temporary Restraining Order is **DENIED WITH PREJUDICE**.

SIGNED this 22nd day of February, 2022.



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ALAN D ALBRIGHT  
UNITED STATES DISTRICT JUDGE